IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

SAMANTHA COLEMAN,	§	
	§	
Plaintiff,	§	
v.	§	
	§	
THEPPHARAJ GROUP, LLC d/b/a KT'S SEAFOOD AND GRILL, KEVIN THEPPHARAJ, individually, and TEVY NOP, individually,	§	**Civil Action No.**
	§	
	§	
	§	
	§	**Jury Demanded**
Defendants.	§	

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff brings this action against Defendants Theppharaj Group, LLC d/b/a KT's Seafood and Grill, Kevin Theppharaj, individually, and Tevy Nop, individually, (collectively referred to as "Defendants"), and would show as follows:

I. OVERVIEW

1. The FLSA allows employers to pay less than minimum wage to employees who receive tips. 29 U.S.C. § 203(m). In doing so, employers may take a "tip credit," which allows employers to include in their calculation of "wages" the amount that an employee receives in tips. *Id.* In order to apply a tip credit toward an employee's minimum wage, an employer must satisfy two conditions: 1) The employer must inform the employee that it will take a tip credit; and 2) tipped employees must retain all the tips they receive, except those tips included in a tipping pool among employees who customarily and regularly receive tips. *Id.*

II. PARTIES

2. Plaintiff is an individual who resides in Tyler, Texas. She was employed by Defendants within the meaning of the FLSA within the three-year period preceding the filing of this complaint. At all times hereinafter mentioned Plaintiff was an individual employee who was engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206-207. Her written consent is attached as Exhibit "A".

3. Defendants Theppharaj Group, LLC d/b/a KT's Seafood and Grill ("KT's"), Kevin Theppharaj, and Tevy Nop operate a seafood company in Chandler, Texas. Defendants are engaged in commerce or the production of goods for commerce within the meaning of the FLSA, and are obligated to ensure that all employees are paid in accordance with the FLSA. Defendants can be served with process through its registered agent, Kevin Theppharaj, located at 894 State Highway 31 East, Chandler, Texas 75758, or wherever he may be found.

III. JURISDICTION AND VENUE

4. This Court has jurisdiction over the claim because Plaintiff has asserted a claim arising under federal law.

5. Venue is proper in the Eastern District of Texas because the events forming the basis of the suit occurred in this District, and Defendants' are located is in this district.

IV. COVERAGE

6. At all material times Defendants have acted, directly or indirectly, in the interest of itself with respect to Samantha Coleman.

7. At all times hereinafter mentioned Defendants have been employers within the meaning of the Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

8. At all times hereinafter mentioned Defendants have been an enterprise within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r).

9. At all times hereinafter mentioned KT's has been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s)(1) of the FLSA, 29 U.S.C. § 203(s)(1), in that said enterprise has had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce and in that said enterprise has had and has an annual gross volume of sales made or business done of not less than $500,000, (exclusive of excise taxes at the retail level which are separately stated).

10. At all times hereinafter mentioned, Plaintiff was an individual employee who was engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206-207.

V. FACTUAL ALLEGATIONS

11. Plaintiff is a former server at KT's. Plaintiff was responsible for providing hospitality to customers, including but not limited to, processing food and drink orders.

12. Plaintiff was an hourly-paid employee who routinely worked 25-30 hours a week. Defendants paid Plaintiff less than minimum wage, taking advantage of a tip credit, which allowed Defendants to include in its calculation of Plaintiff's wages a portion of the amounts that she received in tips. Defendants required Coleman to contribute a portion of her total gross sales during each shift to a tip pool controlled by Defendants. The entire tip pool was then split with

the cooks. Defendants told his employees that if they did not tip back the cooks each shift, then the following shift would include having to double-tip. Defendants also told the employees that if they did not follow this procedure, then they would be written up or fired.

13. KT's cooks are not tipped employees. Because Coleman, as a tipped employee, was only required to contribute to a tip pool from which other tipped employees would draw, she should have been paid at least minimum wage during those shifts where she was required to tip-out the cooks. Because KT's cooks received a portion of Plaintiff's tips, this practice was in clear violation of the FLSA.

14. Plaintiff complained about her compensation, to no avail.

15. Defendants knowingly, willfully, and with reckless disregard carried out its illegal pattern or practice of failing to pay minimum wage compensation with respect to Plaintiff.

VI. CAUSE OF ACTION: FAILURE TO PAY WAGES IN ACCORDANCE WITH THE FAIR LABOR STANDARDS ACT

16. Plaintiff realleges and incorporates the allegations contained in Paragraphs 1 through 15 as if fully stated herein.

17. During the relevant period Defendants violated, and are violating, the provisions of Sections 7 of the FLSA, 29 U.S.C. §§ 207 and 215(a)(2), by employing employees in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the FLSA as aforesaid, without compensating such employees in compliance with the minimum-wage requirements for their work of forty hours per week at rates no less than the minimum wage standard for which they were employed. Defendants have acted willfully by failing to pay Plaintiff in accordance with the law.

18. Defendants violated the FLSA by requiring Coleman to participate in an invalid tip pool, whereby Plaintiff was required to pay a percentage of her tips to Defendants, which then distributed that portion of tips to employees who did not customarily and regularly receive tips. Accordingly, Coleman brings this action to recover unpaid wages under § 216(b) of the FLSA.

19. Defendants' practice of requiring Coleman to pay a percentage of her tips to KT's cooks was in violation of the FLSA. 29 U.S.C. § 203(m). Accordingly, Coleman is entitled to minimum wage for each hour she worked during shifts where she was required to pay a percentage of her tips to the cooks. *Id.*

VII. RELIEF SOUGHT

20. Plaintiff prays for judgment against Defendants as follows:

a. For an Order pursuant to Section 16(b) of the FLSA finding Defendants liable for unpaid back wages due to Plaintiff and for liquidated damages equal in amount to the unpaid compensation found due to Plaintiff; and

b. For an Order awarding Plaintiff the costs of this action;

c. For an Order awarding Plaintiff her attorneys fees; and

d. For and Order awarding Plaintiff pre-judgment and post-judgment interest at the highest rates allowed by law; and

e. For an Order granting such other and further relief as may be necessary and appropriate.

Respectfully submitted,

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